

To: Phil Monson[phil.monson@state.mn.us]
Cc: Pfeifer, David[pfeifer.david@epa.gov]; Poleck, Thomas[poleck.thomas@epa.gov]
From: Wagener, Christine
Sent: Thur 5/28/2015 3:20:39 PM
Subject: FW: Dept of Interior and US EPA ltrs re Maine WQS and Tribal Treat Rights
[ltrDeptofInteriorMaineWQS\(Jan.2015\).pdf](#)
[ltrEPAMaineWQS\(Feb.2015\).pdf](#)

As discussed.

From: Margaret Watkins [mailto:mwatkins@grandportage.com]
Sent: Tuesday, March 17, 2015 10:44 AM
To: Sedlacek, Michael; Wagener, Christine; McKim, Krista; Mayo, Kathleen; Wester, Barbara
Subject: Dept of Interior and US EPA ltrs re Maine WQS and Tribal Treat Rights

All:

Please find attached a letter from the Department of the Interior to US EPA, and US EPA to Maine EPA, resulting from the state of Maine updating water quality standards that include Ceded Territories and Reservation waters. These letters have some implications for the wild rice water quality standards rule making that the State of Minnesota is working on currently, and major industrial project proposal reviews. Please share these letters with anyone else within your agency that may be interested.

"In summary, fundamental, long-standing tenets of federal Indian law support the interpretation of tribal fishing rights to include the right to sufficient water quality to effectuate the fishing right. Case law supports the view that water quality cannot be impaired to the point that fish have trouble reproducing without violating a tribal fishing right; *similarly water quality cannot be diminished to the point that consuming fish threatens human health without violating a tribal fishing right*. A tribal right to fish depends on a subsidiary right to fish populations safe for human consumption. If third parties are free to directly and significantly pollute the waters and contaminate available fish, thereby making them inedible or edible only in small quantities, the right to fish is rendered meaningless. To satisfy a tribal fishing right to continue culturally important fishing practices, fish cannot be too contaminated for consumption at sustenance levels."

Hilary Tompkins, Dept Interior Solicitor to Avi Garbow, US EPA Office of General Counsel

Cheers,

Margaret

